THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.18432 of 2001

02.8.2007

Between:

Konduru Narsaiah, S/o.Vengala Rao

… Petitioner

AND

Government of Andhra Pradesh, Social Welfare (LTR-2) Department
Represented by its Secretary, Secretariat, Hyderabad
And others

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.18432 of 2001

ORDER:

The petitioner is allegedly owner of land admeasuring Acs.6.00 in survey No.101/1 situated at Vootupally village of Chandrugonda Mandal in Khammam District. He allegedly purchased the same under an agreement of sale dated 12.4.1961 from Gaddam Butchanna, a tribal, grandfather of fifth respondent. In 1982, the vendor initiated action under Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959, (the Regulation, for brevity) and sought for restoration of the land to him. The same was dismissed/dropped and it became final. Sometime later, fifth respondent filed application under Section 3(2) of the Regulation for ejectment of the petitioner and restoration of the land. The same was taken as Case No.36/83/Kgm by the second respondent. After conducting enquiry, he passed orders on 22.7.1987 ordering ejectment of the petitioner and restoration of the land to the fifth respondent. Aggrieved by the same, petitioner and seven others who were directed to be ejected filed CMA No.17 of 1987 before the third respondent, who dismissed the appeal on 18.1.1989. This order was also assailed in a revision petition before the Government, who dismissed the same vide G.O.Ms.No.69, dated 30.7.2001, assailing which the present writ petition is filed.

Learned Counsel for the petitioner submits that the proceedings initiated by Gaddam Butchanna, grandfather of fifth respondent, were dropped holding that Butchanna had no right over the land and therefore the second case filed by fifth respondent is barred by principle of *res judicata*. He secondly submits that the petitioner produced considerable evidence before the original authority as well as appellate authority to show that in all the revenue records, names of the petitioner and three others were mentioned as occupants which do

not support the case of the petitioner that the land was not occupied by Butchanna. **Per contra**, learned counsel for fifth respondent submits that his client is a tribal and therefore the sale by grandfather of fifth respondent in favour of petitioner in 1961 without obtaining permission of the Agent to the Government under Section 4(1) of the Agency Tracts Interest and Land Transfer Act, 1917 (Act I of 1917) is void. He nextly contends that the grandfather of fifth respondent died in 1957 as deposed by Sadiam Adi Raju, third respondent before the original authority, and therefore the sale in favour of the petitioner itself fictitious. Lastly he contends that in view of the law laid down by this Court in **Gaddam Raghavulu v Agent to Government**[1] and **Special Deputy Collector (Tribal Welfare) v Datla Venkatapathi Raju**[2], earlier order of the second respondent does not operate as *res judicata*.

There is no dispute that an extent of Acs.16.28 gts in survey No.101/1 was owned by Butchanna, who is a tribal pattadar. That being the case, in the absence of previous consent of the Agent to Government under Section 4(1) of Act I of 1917, permitting such sale, the sale – even if it is true – in favour of the petitioner on 12.4.1961 is void. As per Section 10(1)(b) of Regulation I of 1959, unless sale of immovable property, prior to coming into force of Regulation I of 1959, is valid under Act I of 1917 or any State Law, the same cannot be upheld. In this case all the authorities have correctly appreciated the facts and law and the impugned order does not suffer from any error apparent on the face of record.

The writ petition, with the above observations, is accordingly dismissed. No costs.

(**V.V.S.RAO,J**)

August 02, 2007.
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[1] 1994(2) An.WR 216

[2] 2002(4) ALT 669 (DB)